

## Syllabus.

has not gone to final judgment in either court, and what the result of a trial may be cannot be assumed. We are impressed with the conviction that the orderly administration of justice will be better subserved by our declining to exercise appellate jurisdiction in the mode desired until the conclusion of the proceedings. If judgment goes against petitioner and is affirmed by the Court of Appeals and a writ of error lies, that is the proper and better remedy for any cause of complaint he may have. If, on the other hand, a writ of error does not lie to this court, and the Supreme Court of the District was absolutely without jurisdiction, the petitioner may then seek his remedy through application for a writ of *habeas corpus*. We discover no exceptional circumstances which demand our interposition in advance of adjudication by the courts of the District upon the merits of the case before them.

*Leave denied.*

MR. JUSTICE FIELD dissented.

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*In re* SCHRIVER, Petitioner. Submitted January 22, 1895. Decided February 4, 1895.

THE CHIEF JUSTICE This is an application for leave to file a petition for *habeas corpus* differing in no material respect from that just considered, and, for the reasons there given, it is denied.

MR. JUSTICE FIELD dissented.

*Mr A. J. Dittenhoeffer* for the petitioner.

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## McGAHAN v. BANK OF RONDOUT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

No. 104. Argued December 12, 1894. — Decided February 4, 1895.

In a suit of equity to enforce the rights of a mortgagee in mortgaged realty, the defence that the temporary withholding of the mortgage from record invalidated it as against creditors cannot be made in the first